

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 09-149 MMC

Plaintiff,

**ORDER SETTING BRIEFING
SCHEDULE ON § 2255 MOTION**

v.

MICHAEL CHEN,

Defendant.

Before the Court is defendant's "Application Seeking Habeas Relief Pursuant to 28 U.S.C. § 2255," filed October 7, 2013.

In his motion, defendant alleges that his conviction and sentence, obtained by jury verdict and order of this Court, be vacated, set aside, and/or corrected on the ground that he received ineffective assistance of counsel. In support of such allegation, defendant asserts his trial counsel: (1) improperly disclosed to the government certain documents, thereby waiving the attorney-client privilege and work product protection as to said documents, which constituted "the most incriminating evidence used against [him] at trial" (see Mot. at 20:11-15) and (2) "failed to either conduct an audit and/or seek to introduce such audit figures at trial," which audit, had it been offered in evidence, the Court "could have employed . . . at sentencing" (see id. at 50:12-51:2).

"Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the

1 United States attorney” 28 U.S.C. § 2255(b). Here, neither the motion nor the case
2 record on file conclusively demonstrates defendant is entitled to no relief based on his
3 claim of ineffective assistance.

4 Accordingly, the Court sets the following briefing schedule:

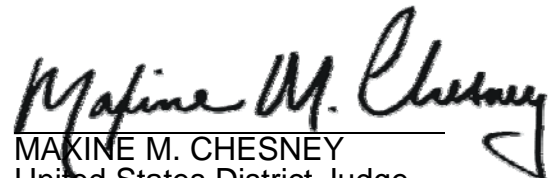
5 1. No later than December 3, 2014, the government shall file its response to the
6 motion.

7 2. No later than January 7, 2015, defendant shall file any reply.

8 3. After receipt of the parties’ briefing, the Court will determine whether an
9 evidentiary hearing is necessary and, if so, a hearing date will be scheduled.

10 **IT IS SO ORDERED.**

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12 Dated: October 28, 2014

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14 MAKINE M. CHESNEY
15 United States District Judge
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